

ROBERT W. GOSSUM

IBLA 2002-309

Decided October 31, 2002

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claim null and void for failure to timely answer contest complaint. CACA 43806.

Affirmed.

1. Mining Claims: Contests--Rules of Practice: Government Contests

Where a Government contest complaint against a mining claim contains charges which, if proven, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void under the Department's regulations governing such contests.

APPEARANCES: Robert W. Gossum, Barstow, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Robert W. Gossum has appealed from a March 26, 2002, decision of the California State Office, Bureau of Land Management (BLM), declaring the Gyron Lode mining claim, CAMC 127299, null and void when an answer to a contest complaint, CACA 43806, was not timely received.

The subject lode claim was located on April 23, 1983. The location notice describes the claim as situated in the NE1/4 of Section 22, T. 13 N., R. 10 E., San Bernardino Meridian. The claim is located within the boundaries of the Mojave National Preserve in an area withdrawn from location pursuant to sec. 505 of the California Desert Protection Act of October 31, 1994, 108 Stat 4471, 4491. In July 2001, the U.S. National Park Service (NPS) requested that a contest action against the claim be initiated by BLM. Copies of the contest complaint were separately served on the co-claimants, Gossum and Jonathan Hull. The complaint charged that minerals have not been found within the limits of the claim in sufficient quantities or of sufficient quality to constitute a valid discovery of a valuable mineral deposit on the date of withdrawal in 1994 or at the time of examination in 1998.

The record shows that Gossum was served with the complaint on January 28, 2002. Copies of the complaint sent to Hull at his addresses of record were returned "unclaimed." ^{1/} The complaint included a specific notice which informed the claimants that unless an answer was filed within 30 days after service of the complaint, the allegations of the complaint "will be taken as admitted and the case will be decided without a hearing."

Gossum's answer was received by BLM on March 11, 2002, in an envelope postmarked March 8, 2002. Therein Gossum states that due to his "oversight this response to your complaint is late having gone beyond the thirty day limit specified by your code." He disputed the allegations of the complaint and challenged BLM's authority to invalidate the claim without a hearing.

In response, BLM issued its decision. Citing the regulations regarding the grace period for filing, 43 CFR 4.422(a), BLM determined that the answer received from Gossum was untimely. Based on this determination, BLM accepted the charges as set forth in the complaint as true and held the Gyron Lode mining claim to be null and void pursuant to 43 CFR 4.450-7(a). That regulation provides: "If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the manager will decide the case without a hearing."

In his statement of reasons, Gossum argues that his "failure to respond within 30 days was in no way an admission that the Gyron claim is invalid." He then describes the circumstances which led to his not reading the contest complaint until after the 30-day response period had elapsed. He states his car broke down and that he was in the process of moving his residence when the certified letter containing the complaint was received. He inadvertently left it in his car because the letter was from BLM rather than NPS and he did not consider it to be urgent or consider that it had any relevance to his claim. He assumed that NPS had "accepted the claim as valid" because the claim had been examined by NPS 2 years earlier and he had heard nothing during that period.

[1] Departmental regulation 43 CFR 4.450-6 specifically requires that answers to contest complaints must be filed within 30 days of receipt of the complaint. This Board has held on numerous occasions that this regulation is mandatory in nature and jurisdictional in character, and therefore a failure to timely file may not be waived. E.g., United States v. Grooms, 146 IBLA 289, 292 (1998); Robert D. McGoldrick, 115 IBLA 242,

^{1/} As provided in 43 CFR 4.422(c)(3), "[a] document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post office of an undelivered registered or certified letter." Furthermore, when a BLM officer uses the mail to send a communication to someone entitled to such communication, "that person will be deemed to have received the communication if it was delivered to his last address of record [with BLM] regardless of whether it was in fact received by him." 43 CFR 1810.2(b).

245 (1990); United States v. Soren, 47 IBLA 226, 227 (1980); United States v. McCormick, 5 IBLA 382, 79 I.D. 155 (1972); United States v. Sainberg, 5 IBLA 270, 272-274 (1972), aff'd, Sainberg v. Morton, 363 F. Supp. 1259, 1263 (D. Ariz. 1973) (may not be excused, even where the answer is filed one day late).

Both the contest complaint and the applicable regulation, 43 CFR 4.450-7(a), expressly advised claimants that if an answer were not filed within 30 days, as required, the allegations of the complaint would be taken as admitted and the case would be decided without a hearing. Gossum clearly failed to timely file an answer to the contest complaint, as a result of which the allegations made therein must be taken as admitted. Thus, BIM properly declared the claim null and void. E.g., United States v. Grooms, supra; Robert D. McGoldrick, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

T. Britt Price
Administrative Judge